IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.18727 M OF 2005

DATE OF DECISION: FEBRUARY 28, 2007

Amar Manchanda

.....Petitioner

VERSUS

Union Territory, Chandigarh

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Jagdish Manchanda, Advocate,
for the petitioner.

Mr. Rajiv Sharma, Advocate,
Standing Counsel for U.T., Chandigarh.

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RANJIT SINGH, J.

Participation of the petitioner in `***JAGRATTA'*** has led to registration of a case against him for different offences.

Playing of loud speaker at a very high pitch has led to registration of this case. Police is insisting on prosecuting the petitioner unmindful of the nature and background of the allegations. On 30.10.2001, FIR No.426 dated 31.10.2006 was registered on a message received by the police regarding

playing of loud speaker. ASI, on reaching the spot found that a `***Jagratta'*** was organised by one Sh.Har Narain, President, Patel Market, Sector 15, Chandigarh. The persons organising the Jagratta were asked to slow down the volume of the loud speaker. They were also told to produce the permission for playing the loud speaker. One Manjit Singh is alleged to have shown the permission letter No.DC/MA/CHD/UT/2302 dated 16.10.2001. As per the letter permission for playing loud speaker was shown to have been granted from 9 P.M. to 10.00 P.M. However, word `***AM'*** was cut and made to read `***PM'*** with figure **`10.00'** on the printed form which was marked with different ink. When questioned about this cutting and asked to lower down the volume of the speaker, the persons present there refused to do so besides retorting that they would continue with ***Jagratta*** for whole night. Mohini Sound System of Anil Kumar of Sector 10 was made to understand and was apprised about the cutting as afore-mentioned and also the fact that the action amounted to creating a nuisance, which is an offence under Sections 4 and 5 of the Punjab Noise Control Act. Information was accordingly sent to the Police Station, which led to registration of the impugned FIR under Sections 341, 353, 420, 468, 471 and 120-B IPC.

Apart from other pleas, it is submitted that the petitioner is involved in the present case only because of political revelry and has otherwise no connection with the allegations made in the FIR. The petitioner is not concerned with organising the **`Jagratta'**. As noticed, the wife of the petitioner, a candidate for municipal election and belonged to Chandigarh Vikas

Manch, was invited to attend this Jagratta and the petitioner, who had accompanied his wife is involved in the present case. Terming this to be an abuse of process of the law, the petitioner has pleaded that the allegations against him are motivated and made due to political consideration alone. Mrs.Neeru Aman Manchada, wife of the petitioner, was invited to be a Chief Guest of this Jagratta and the petitioner had accompanied her being husband as the `**Jagratta**', as per religious requirement, was to continue till early hours. `**Jagratta'** was organised by the Members of the Patil Market in Sector 15 and the petitioner had nothing to do with it, being neither a Member of this Committee nor a resident of Sector 15. When the police came, the petitioner and his wife had come out of the tent hearing conversation outside. The organisers had slowed down the volume of the speaker on being so asked by the police. The petitioner complains that he is falsely involved in this case, which would not reveal anything against him, much less the offences under Sections 341, 353, 420, 468, 471 and 120-B IPC. The petitioner claim himself to be a social worker and a respectable citizen of Chandigarh who had earlier been a Chief Traffic Warden and founder of a Traffic Warden Cell. Representation made by the petitioner to Senior Superintendent of Police, Chandigarh, and other higher authorities, did not receive any attention or advice. It is then that he has filed the present petition. The petitioner maintains that this is a clear case of an abuse of process of law. The further plea is that no offence against the petitioner is made out from the FIR or subsequent proceedings as he was not concerned or connected with the `**Jagratta'** except as

participant.

Notice of motion was issued on 8.4.2005. Further proceedings in this case were stayed on 24.5.2005. Thereafter the case was adjourned from time to time but no reply was filed. On 19.7.2006, counsel for Union Territory took time to file reply and the case was adjourned to 13.11.2006. Still the reply was not filed. Another opportunity was given to respondent-U.T. for the same purpose and the case was adjourned to 23.2.2007. Still the reply was not filed. On 23.2.2007, it was noticed that despite repeated opportunities the reply is not being filed and accordingly right to file reply was fore-closed and the case was adjourned to 28.2.2007 for arguments.

Counsel for Union Territory has pointed out that challan has been presented in this case under Sections 353, 341, 420, 471 and 120-B IPC. He otherwise could not point out as to how offences alleged would be made out against the petitioner or how he could be held responsible for the allegations made in the FIR in the background of the facts as noticed.

I have heard counsel for the parties.

I have not been able to understand as to how the petitioner could have been blamed for creating noise pollution or made responsible for other offences alleged in the FIR. It is not disputed that wife of the petitioner was candidate for municipal election and was set up as such by a political party. Jagratta is a religious function, which was organised by Market Committee, Sector 15, Chandigarh. The wife of the petitioner, being a candidate in the Municipal Council election, was invited to participate in this Jagratta.

`Jagratta',** as is well known, is a religious function, which is held throughout the night and ends in the early hours of the morning with a concluding prayer. It was the organisers of the **`Jagratta' who would have made arrangement for loud speaker. It would be the Committee who would have been responsible in obtaining the permission for playing the loud speaker. How could, under such circumstances, a guest invited for **`Jagratta'** could be held responsible for creating a noise pollution or other offences allegedly revealed mainly due to cutting on the permission slip. If the petitioner, who had accompanied his wife, is to be blamed for creating the noise pollution, then every participant in the Jagratta, even as a listener, would not be able to escape responsibility. Nothing could be pointed out otherwise, indicating the role of the petitioner in either getting permission or in carrying out cutting in the permission slip etc. It could not have been and, perhaps realising this difficulty, the Union Territory Administration has not been able to file reply despite taking repeated opportunities. No defence is projected by the learned counsel for Union Territory, Chandigarh, which can justify this unfair approach on the part of police and Union Territory. A citizen can rightly expect better policing, especially from high profile police of Union Territory, Chandigarh. The police otherwise cannot be seen to be acting as a tool in the hands of political masters. The police has to act independently to investigate any criminal offence and to take it to its logical conclusion. The police can be reminded of the caution administered by Lord Denning in ***R. Vs. Metropolitan Police Commissioner,*** (1968) 1 All ER 763. Indicating the duty of

the Commissioner of Police, Lord Denning spoke thus:-

> "I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State,.. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not prosecute his man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

Would these proceedings convey an impression that these are being continued for law enforcement? No justification was advanced or could be so offered for continuation of the criminal proceedings against the petitioner. One is left wondering as to on what basis the challan is presented in this case against the petitioner. Even upon reading of the entire contends of the FIR in totality, no offence would be made out against the petitioner. The proceedings against the petitioner, as such, are nothing but an abuse

of process of Court.

The present petition is accordingly allowed. The impugned FIR and all subsequent proceedings against the petitioner are hereby quashed.

February 28,2007 **(RANJIT SINGH)**
khurmi **JUDGE**